

ORIGINAL

OPEN MEETING AGENDA ITEM



0000107907

February 22, 2010

EXCEPTION

RECEIVED

Ernest G. Johnson
Executive Director

2010 FEB 19 P 2:13

Arizona Corporation Commission

DOCKETED

Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

AZ CORP COMMISSION
DOCKET CONTROL

FEB 19 2010



Docket Nos. W-04254A-08-0361 and W-04254A-08-0362

**Exception to Recommendation of Administrative Law Judge
Montezuma Rimrock Water Company LLC (MRWC)
(Extension of Time Deadline Contained in Decision No. 71317)**

**Request to extend MRWC's deadline to obtain an Arizona
Department of Environmental Quality Certificate of Approval
of Construction for Well #4 to April 30, 2010**

1. On February 4, 2010, the Arizona Water Infrastructure Financing Authority (WIFA) suspended a \$165,000 loan to the company for the purpose of completing an Arsenic Treatment Project to address its water supply exceeding the current Arizona Department of Environmental Quality maximum contaminant level of 10 parts per billion. (Exhibit 1)
2. WIFA suspended the loan after receiving information regarding environmental concerns related to the arsenic treatment plant. Due to these newly raised issues, which were not addressed in the company's Environmental Review Checklist submitted with its loan application, WIFA rescinded the initial Categorical Exemption from the National Environmental Policy Act and decided to require an increased level of environmental review.

3. WIFA has requested MRWC to submit an Environmental Information Document that will be used by WIFA to create an Environmental Assessment (EA). The EA will be used to determine whether there is significant environmental impact from the proposed project.
4. As of February 19, 2010, MRWC has not filed an Environmental Information Document with the authority.
5. In addition to completing the Environmental Information Document, WIFA is requiring the company to specifically address three issues with a formal letter from the appropriate state and federal agencies:
 - a. The project is known or expected to directly or indirectly affect cultural resources: Montezuma Well National Monument (National Park Service, U.S. Department of Interior.)
 - b. The project is known or expected to directly or indirectly affect the habitat of endangered or threatened species: Southwest Willow Flycatcher in Wet Beaver Creek: (U.S. Fish & Wildlife Service and/or Arizona Game and Fish)
 - c. The project is known or expected to directly or indirectly affect the 100-year floodplain (FEMA).
6. If WIFA's Environmental Assessment determines there is significant environmental impact, particularly to Montezuma Well National Monument, whose western boundary is 297 feet from the #405-25-517, and Wet Beaver Creek, which lies approximately 300 feet south of Well #4, WIFA will order the company to conduct an Environmental Impact Statement.
7. Alternatively, WIFA could issue a Finding of No Significant Impact (FONSI). At that point, WIFA will publicly notice the FONSI for a period of 30 calendar days and receive and review any comments.
8. On October 7, 2009, Yavapai County Development Services issued a citation to Montezuma Rimrock Water Company for operating a commercial business in a residentially zoned neighborhood. The company was cited for distributing water from Well #4 located at parcel #405-25-517. (Exhibit #2)

9. The citation forced MRWC to seek a use permit for Well #4, more than three years after it drilled the well in a residential neighborhood, and erected a 7-foot chain link fence and triple strands of barbed wire. The industrial type improvements negatively impacted neighboring property values.
10. On January 20, 2010, the Yavapai County Planning and Zoning Commission voted to delay making a recommendation on whether to grant MRWC a use permit for its well site on parcel #405-25-517.
11. On February 17, 2010, the Yavapai County Planning and Zoning Commission voted to approve a recommendation to the Board of Supervisors to issue a use permit to MRWC. Neighborhood opposition to the Use Permit will require a unanimous vote of the Supervisors to issue the permit. The Supervisors hearing is scheduled in mid-March.
12. MRWC has not been in compliance with ADEQ drinking water standards since Jan. 1, 2006.
13. ADEQ issued a Notice of Violation to MRWC on Dec. 17, 2008 for violating arsenic drinking water standards. (Exhibit #3)
14. Last fall, ADEQ issued three letters demanding MRWC sign a Consent Order for violating arsenic drinking water standards – October 21, November 12 and November 20. The agency also demanded that the company provide alternative drinking water to customers. (Exhibit 4)
15. MRWC has refused to sign the consent orders. On November 30, 2009, MRWC owner Patricia Olsen stated in a letter to ADEQ Assistant Director Henry R. Darwin “operation of the arsenic treatment center is expected to begin by April 30, 2010.” (Exhibit 5)
16. Ms. Olsen also stated in the November 30, 2010 letter to Mr. Darwin that MRWC “has no resources to move forward with the arsenic treatment system until WIFA releases funds.”
17. The suspension of the WIFA loan until an Environmental Assessment is complete and the uncertainty over obtaining a use permit from

Yavapai County in a timely manner, makes it is very unlikely that MRWC will meet the Arizona Department of Environmental Quality's April 30, 2010 deadline to obtain a Certificate of Approval of Construction (AOC) for its arsenic treatment project.

18. MRWC has an April 30, 2010 compliance deadline to provide the Commission a copy of the AOC for the arsenic treatment plant.
19. MRWC will not be able to obtain an AOC for Well #4 until it obtains the AOC for the arsenic treatment plant.
20. MRWC currently operates three wells. Well #2 (DWR #55-621604) was drilled in 1974 taken off line in 2003. An attempt was made to drill the deeper in order to find water with lower arsenic concentration. A highly mineralized layer was encountered and Well #2 was partially backfilled and capped, but not abandoned.
21. Well #3 (DWR#55-22458) was drilled in 2001 adjacent to Well #2 and is currently on line. The well yields 15 gpm and has arsenic concentrations of 33 mg/l.
22. Well #1 (DWR #55-621604) was drilled in 1994 and is the company's primary production well yielding 55 gpm. ADWR states the depth of the well is 350 feet and the 8-inch casing is 85 feet in depth. MRWC believes the pump was set at approximately 260 feet and the original well depth is closer to 400 feet. When the pump was replaced four years ago the well driller stated the pump could not be lowered past the previous pump level and the well may have collapsed below that depth. The well has arsenic concentrations exceeding 36 mg/l. (Exhibit 5)
23. Well #1 failed last November and the water system was shut for several hours. MRWC has stated in public hearings that Well #1 is in poor condition.
24. The suspension of the WIFA loan until an Environmental Assessment and is completed and the high likelihood of legal challenges if a FONSI is issued, and the community's challenge to the company's use permit for Well #4 are the direct result of poor management decisions. The company submitted a misleading environmental

disclosure statement to WIFA that resulted in crucial financing for an arsenic treatment system being suspended. The company ignored county zoning regulations and attempted to slip a commercial business into a residential area. As a result, the company has unnecessarily exposed itself and its customers to uncertainty, additional expense and further delay in meeting federal and state safe drinking water standards.

25. In light of these facts and the high prospect of further delays, it is in the best interest of the company's customers for the Commission to reject the company's request to extend the deadline to obtain an AOC for Well #4 to June 30, 2010. Instead, the Commission should not extend the deadline for the company to file a copy of the AOC for Well #4 past April 30, 2010 – the same date the company must submit a copy of its AOC for the arsenic treatment system.
26. If the company fails to meet the April 30, 2010 deadlines to obtain an AOC for the arsenic treatment system and Well #4, the Commission should consider following staff's recommendation in Decision 67583 issued Feb. 15, 2005 and allow the Arizona Water Company (AWC) to absorb the service area now under MRWC control.
27. In paragraph 33 of Decision 67583, staff stated that customers "could better be served" by allowing AWC to purchase the water company from the Montezuma Estates Property Owner's Association. "AWC's Rimrock system is within 600 feet of Applicant's (MRWC) system; AWC has a strong financial history; AWC has a new 350 gpm well which can be interconnected with Applicant's system and used to provide services to the Company's service area; and AWC already has a Commission approved plan for arsenic treatment."
28. AWC has since installed an arsenic treatment system at its Well #4 in Rimrock. AWC has extended a 12-inch pipeline along Beaver Creek Road to within approximately 2,000 feet of the MRWC connection near Kramer Driver and Beaver Creek Road.
29. AWC's published water rates are substantially lower than MRWC, which will further increase if and when the arsenic treatment system is constructed.

30. In light of the facts in this case, it is reasonable and appropriate to grant MRWC an extension of time, until April 30, 2010, to file with Docket Control, as a compliance item in this docket, a copy of the AOC for its new Well #4.

ORDER

IT IS THEREFORE ORDERED that the deadline for Montezuma Rimrock Water Company LLC to file a copy of the Arizona Department of Environmental Quality Certificate of Approval of Construction for its new Well #4, as set forth in Decision No. 71317, is hereby extended to April 30, 2010.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "John E. Dougherty III", with a stylized flourish at the end.

John E. Dougherty III
PO Box 1365
Rimrock, AZ
86335

5225 N. Bentley Drive
Rimrock, AZ
86335

Exhibit 1, p.1

From: Sara Konrad

Sent: Friday, February 05, 2010 9:24 AM

To: Patricia Olsen

Cc: Judy Navarrete

Subject: RE: Environmental Information Document for Montezuma Rimrock Water Company.

WIFA received a citizen's complaint regarding some environmental concerns of the Arsenic Facility Installation Project. Due to these newly raised issues which were not addressed in the Environmental Review Checklist, WIFA has rescinded the initial Categorical Exemption and decided to require a higher level environmental review.

Please feel free to contact me with any questions as you complete the Environmental Information Document.
Sara

From: Patricia Olsen [mailto:patsy@montezumawater.com]

Sent: Wednesday, February 03, 2010 2:39 PM

To: Sara Konrad

Subject: Re: Environmental Information Document for Montezuma Rimrock Water Company.

Sara,

Are these your questions and findings or Mr. Dougherty's?

Thank you,

Patricia Olsen, President

Montezuma Rimrock Water Co. LLC

P.O. Box 10

Rimrock, AZ 86335

928-592-9211

From: Sara Konrad <skonrad@azwifa.gov>

To: patsy@montezumawater.com

Cc: Judy Navarrete <jnavarrete@azwifa.gov>

Sent: Wed, February 3, 2010 10:11:19 AM

Subject: Environmental Information Document for Montezuma Rimrock Water Company.

As you are aware, the Categorical Exemption previously issued for this project may not have been warranted as WIFA has recently received information that the project does not qualify under one or more of the categories in R18-15-107 (B).

WIFA must further verify conditions surrounding this project. To do so, you will need to prepare an Environmental Information Document (EID). I have attached the template for that document prescribing the required format. To expedite WIFA's review and development of an Environmental Assessment (EA) from the EID, it is vital that the EID thoroughly address each of the sections in the document.

Specifically for this project, the following issues have been raised and the Environmental Information Document

Exhibit 1, p.2

must specifically address each with a formal letter from the appropriate federal or state agency:

1. The project is known or expected to directly or indirectly affect cultural resources: Montezuma's Well (National Park Service, U.S. Department of the Interior)
2. The project is known or expected to directly or indirectly affect habitats of endangered or threatened species: Southwest Willow Flycatcher in Wet Beaver Creek (U.S. Fish and Wildlife and/or AZ Game and Fish)
3. The project is known or expected to directly or indirectly affect the 100 year floodplain (FEMA).

If it so happens that these issues are not significant, then WIFA can, upon receipt of the EID, issue a Finding of No Significant Impact (FONSI). At that point, WIFA will publicly notice the FONSI for a period of 30 calendar days and receive and review any comments. If these issues are significant, then an Environmental Impact Statement will be required, and WIFA will contact you about proceeding with that process.

Please feel free to contact me if you have any questions.
Thank you,

Sara Konrad

Environmental Program Specialist
Arizona Water Infrastructure Finance Authority (WIFA)
1110 W. Washington St., Suite 290
Phoenix, AZ 85007
(602) 364-1319
fax (602) 364-1327

www.azwifa.gov

Exhibit 2



Yavapai County Development Services Department

500 S. Marina Street, Prescott, AZ. 86303/10 S. 6th Street, Cottonwood, AZ. 86326
(928) 771-3214 - (928) 639-8151

NOTICE OF VIOLATION

CASE #: V32009001136 APN #: 405-25-517 SUPERVISOR DISTRICT: 3 ZONING DISTRICT: R1L-10

DEFENDANT: MONTEZUMA RIMROCK WATER CO.
MAILING P.O. BOX 10
ADDRESS: RIMROCK, AZ 86335
PHONE:
BUSINESS:

BUSINESS &
ADDRESS:

BUSINESS PHONE:

SITUS STREET: CITY: STATE: ZIP:
ADDRESS: 4645 E. TIEMANN RD COTTONWOOD AZ 86326

RENTAL OPTION: RENTER OR LEASEES NAME TELEPHONE:
LEASE OPTION: & ADDRESS:

VACANT LAND: X OWNER OCCUPIED: UNOCCUPIED/ABANDONED STRUCTURE:

The undersigned certifies that the Defendant named herein ON MONTH 10 DAY 7 YEAR 2009
COMMITTED A VIOLATION(S) OF THE YAVAPAI COUNTY ZONING ORDINANCE OR OTHER COUNTY ORDINANCES OR CODES AS LISTED
BELOW: CIVIL PENALTIES MAY BE SET IN ACCORDANCE WITH STATE LAW FOR VIOLATIONS OF THE PLANNING AND ZONING ORDINANCE
(A.R.S. §11-808(D)) AND A.R.S. §11-888 FOR VIOLATIONS OF THE BUILDING CODES.

Yavapai County Planning & Zoning Ordinance Section(s)

Sec. 400 - Non-Permitted use or Disallowed Use
Sec. 564 - Outside Storage

I HEREBY CERTIFY THAT I HAVE REASONABLE GROUNDS TO BELIEVE AND DO BELIEVE THAT THE PERSON NAMED IN THE COMPLAINT
COMMITTED THE VIOLATION(S) DESCRIBED ABOVE. IF THE ABOVE VIOLATIONS ARE RESOLVED BY: 12/7/2009, THE BELOW
SCHEDULED HEARING WILL BE CANCELLED. TO DISCUSS REMEDIES CONTACT THE SPECIALIST.

SPECIALIST SIGNATURE

YOU MUST APPEAR BEFORE THE HEARING OFFICER AT THE: Defendant may affirm or deny responsibility for the violation(s) on the hearing or
by mail or a third party, or be represented by an attorney. If the defendant is
attorney, admitting or denying the violation(s) listed in the above complaint to:
YAVAPAI COUNTY ADMINISTRATIVE BUILDING
SUPERVISOR'S BOARD RM. 1ST FLOOR
1015 FAIR STREET, PRESCOTT AZ 86305
YAVAPAI COUNTY DEVELOPMENT SERVICES LAND USE UNIT
500 S. MARINA STREET, PRESCOTT AZ 86303

ON THE DATE AND TIME INDICATED BELOW:

NOTE: THE DEFENDANT OR THE DEFENDANT'S ATTORNEY MUST NOTIFY THE HEARING OFFICE IN WRITING AT LEAST 10 DAYS BEFORE
HEARING THAT THE DEFENDANT WILL BE REPRESENTED BY AN ATTORNEY.

MONTH 12 DAY 11 YEAR 2009 TIME 9:00:00AM

I CERTIFY THAT I HAVE SERVED THE COMPLAINT AND SUMMONS ALONG WITH THE HEARING OFFICER RULES OF PROCEDURE
OUTLINING THE DEFENDANT'S RIGHTS AND RESPONSIBILITIES AND SANCTIONS AND FINES THAT MAY BE IMPOSED AND THAT SERVICE
WAS DONE BY:

☒ Personal Service ☐ Certified Mail ☐ Service by Sheriff Deputy ☐ Property Posted

Signature R. Grossmayer

Date: 12/3/09

Jeanne Grossmayer
Printed Name



Janet Napolitano
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007
(602) 771-2300 • www.azdeq.gov



Stephen A. Owens
Director

Notice of Violation
Exhibit 3, p.1

CERTIFIED MAIL

Return Receipt Requested

December 17, 2008

Case ID: 105250

MONTEZUMA RIMROCK WC LLC
Attention: Patricia Olsen
P.O. Box 10
Rimrock, AZ 86335

Re: Notice of Violation issued to MONTEZUMA RIMROCK WC LLC – PWS #13-071

Dear Ms. Olsen:

Based upon a recent file review of analytical results from this public water system, ADEQ is issuing the attached Notice of Violation ("NOV").

The attached NOV is an informal compliance assurance tool used by ADEQ to put a responsible party (such as a facility owner or operator) on notice that the Department believes a violation of an environmental requirement has occurred. It describes the facts known to ADEQ at the time of issuance and cites the requirement that ADEQ believes the party has violated.

Although ADEQ has the authority to issue appealable administrative orders compelling compliance, an NOV has no such force or effect. Rather, an NOV provides the responsible party an opportunity to do any of the following before ADEQ takes formal enforcement action: (1) meet with ADEQ and discuss the facts surrounding the violation, (2) demonstrate to ADEQ that no violation has occurred, or (3) document that the violation has been corrected.

ADEQ reserves the right to take a formal enforcement action, such as issuing an administrative order or filing a civil lawsuit, regardless of whether the Department has issued an NOV. Neither ADEQ's issuance of an NOV nor its failure to do so precludes the Department from pursuing these remedies. However, the timeliness of a complete response to this notice will be considered by ADEQ in determining if and how to pursue such remedies.

Sincerely,

Cynthia S. Campbell

Cynthia S. Campbell, Manager
Water Quality Compliance Section

Cc:

Ben Chou, ADEQ ENVMTL PRG SPCT

Yavapai County Community Health Services
Robert Resendes, Director
1090 Commerce Drive
Prescott, AZ 86305

Patrick Chan,
US EPA Regional Office IX
75 Hawthorne St.
San Francisco, CA 94105



Janet Napolitano
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street Phoenix, Arizona 85007
(602) 771-2300 www.azdeq.gov



Stephen A. Owens
Director

CERTIFIED MAIL
Return Receipt Requested

Case ID #: 105250

December 17, 2008

Montezuma Rimrock Water Co Llc
Attention: Patricia D. Arias
Po Box 10
Rimrock, AZ 86335-0010

Subject: Montezuma Rimrock Water Co LLC, Place ID 135127
LAT: 34d, 39', .67" N LNG: 111d, 46', 12.5" W

NOTICE OF VIOLATION

The Arizona Department of Environmental Quality (ADEQ) has reason to believe that Montezuma Rimrock Water Co Llc as the owner/operator of Montezuma Rimrock Water Co LLC has violated a requirement of the Arizona Revised Statutes (A.R.S.), a rule within the Arizona Administrative Code (A.A.C.), or an applicable permit/license, administrative order or civil judgment. ADEQ discovered the violations alleged below during a file review completed on December 04, 2008.

I. LEGAL AUTHORITY and NATURE OF ALLEGED VIOLATION(S)

1. 40 CFR § 141.62(b) / A.A.C. R18-4-109

Distribution of water in excess of the MCL for an inorganic chemical

According to ADEQ records, analytical results submitted for the above referenced water system indicates an exceedance of the Maximum Contaminant Level (MCL) for arsenic. The sample taken at the Entry Point to the Distribution System (EPDS) #001 on June 11, 2008 indicates a level of 0.036 mg/L, and the sample taken at EPDS #003 on June 11, 2008 indicates a level of 0.038 mg/L. The MCL for arsenic is 0.010 mg/L.

II. DOCUMENTING COMPLIANCE

1. Within 30 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or describe the measures that have been or will be taken to resolve the arsenic exceedance. These must include a specific proposal for treatment or elimination of the source of the exceedance and a plan to provide an alternate source of safe drinking water to be used by the Water System until the Plan is fully implemented (i.e. bottled water, a point of use (POU) treatment device, hauling water, blending or another water source). The Plan shall include a schedule of implementation to begin no later than 30 days after ADEQ approval.

Notice of Violation
Montezuma Rimrock Water Co LLC
December 17, 2008

Page 2

2. Within 60 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or please submit laboratory results indicating that the MCL for arsenic is no longer being exceeded at the appropriate point of compliance for this drinking water system. Submitting results for sampling performed after receipt of this Notice will not alter the monitoring and reporting schedule set in rule.

III. SUBMITTING COMPLIANCE DOCUMENTATION

Please send all compliance documentation and any other written correspondence regarding this Notice to ADEQ at the following address:

Arizona Department of Environmental Quality, Attention: Vivian J. Burns, Water Quality Compliance Enforcement Unit, 1110 W Washington St, Phoenix, AZ 85007 MC: 5415B-1

IV. STATEMENT OF CONSEQUENCES

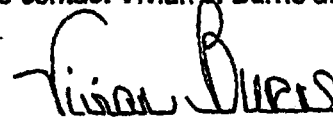
1. The time frames within this Notice for achieving and documenting compliance are firm limits. Failure to achieve or document compliance within the time frames established in this Notice will result in an administrative compliance order or civil action requiring compliance within a reasonable time frame, substantial civil penalties, and/or the suspension or revocation of an applicable permit/license. ADEQ will agree to extend the time frames only in a compliance schedule negotiated in the context of an administrative consent order or civil consent judgment.
2. Achieving compliance does not preclude ADEQ from seeking civil penalties, and/or suspending or revoking an applicable permit/license for the violation(s) alleged in this Notice as allowed by law.

V. OFFER TO MEET

ADEQ is willing to meet regarding this Notice. To obtain additional information about this Notice or to schedule a meeting to discuss this Notice, please contact Vivian J. Burns at (602) 771-4608.



Cynthia S. Campbell, Manager
Water Quality Compliance Section



Vivian J. Burns
Water Quality Compliance Enforcement Unit

Vivian J. Burns

From: Vivian J. Burns
Sent: Friday, November 20, 2009 2:58 PM
To: 'Patricia Olsen'; 'Doug Fitzpatrick'
Cc: Cynthia S. Campbell; 'Del Smith'
Subject: Montezuma Rimrock Water Company - Public Water System #3-071
Attachments: 20091119182045022.pdf, Montezuma Rimrock - #13-071.doc

Dear Patricia,

I'm responding to the email I received from your attorney, Doug Fitzpatrick, on November 13, 2009 requesting that Montezuma Rimrock Water Company (Montezuma Rimrock), Public Water System (PWS) #13-071 not be required to provide an alternate source of drinking water available to its customers. Please refer to the Environmental Protection Agency (EPA) attachment I included in my November 12, 2009 letter to you stating that the new arsenic standard was adopted by the EPA on January 22, 2001, and water systems were to meet the new standard by January 23, 2006. Montezuma Rimrock has had almost nine (9) years to come into compliance with the new ruling. Therefore, as stated in my November 12 letter, the Arizona Department of Environmental Quality (ADEQ) is requiring that on or before December 1, 2009, Montezuma Rimrock shall make an alternate source of drinking water available to its customers. Prior to December 1, 2009, a notice is to be issued to all consumers of drinking water provided by PWS #13-071 stating that an alternative source of drinking water is available. A copy of that notice along with a notarized affidavit shall be submitted to ADEQ by December 8, 2009 stating how the notice was made available to consumers of drinking water provided by PWS #13-071. The alternative source of drinking water shall stay in effect until ADEQ deems the water is no longer a threat to human health.

In Mr. Fitzpatrick's email he referred to an on-going arsenic exceedance at the Town [City] of Cottonwood (Cottonwood), stating that Cottonwood is not being required to provide an alternative source of drinking water for its customers pending implementation of an arsenic treatment system. ADEQ's response is that Cottonwood is in the process of installing an arsenic removal system, and many of its facilities are already in compliance. Mr. Fitzpatrick also states, "Similarly, water systems overseen by the EPA are not being required to provide alternative sources of drinking water pending resolution of their arsenic issues." As for water systems overseen by the EPA, I can't comment on the EPA ruling(s).

I'm requesting a signed Consent Order be submitted to me by December 1, 2009, or I will be forced to proceed with a Compliance Order, which could include penalties. Please call me at (602) 771-4608 if you have questions, or if you wish to schedule a meeting to discuss the Order. I can also be reached by email at burns.vivian@azdeq.gov. If I am not available, Cynthia Campbell, Manager Water Quality Compliance and Enforcement Section can be reached at (602) 771-2209.

Sincerely,
Vivian Burns, Water Quality Enforcement Unit Case Manager
Arizona Department of Environmental Quality
Water Quality Compliance Section
1110 W. Washington St., MC 5415B-1
Phoenix, AZ 85007-2952
Burns.vivian@azdeq.gov

Attachments:
November 13, 2009 letter from Doug Fitzpatrick, Esq.

November 12, 2009 letter to Patricia Owens

cc:

Cynthia Campbell, Manager Water Quality Compliance and Enforcement Section

Del Smith, Arizona Corporation Commission

Vivian J. Burns

From: Cynthia S. Campbell
Sent: Tuesday, December 01, 2009 10:44 AM
To: Vivian J. Burns
Subject: FW: Montezuma Rimrock Water Company LLC

FYI

From: Patricia Olsen [mailto:patsy@montezumawater.com]
Sent: Monday, November 30, 2009 3:31 PM
To: Henry Darwin
Cc: Cynthia S. Campbell
Subject: Montezuma Rimrock Water Company LLC

November 30, 2009

Henry R. Darwin
Arizona Department of Environmental Quality
1110 W. Washington St.
Phoenix, AZ 85007

Dear Mr. Darwin,

I own and operate Montezuma Rimrock Water Company, LLC (MRWC). I purchased the water company in July of 2005. When this water company was purchased, it had no arsenic treatment system in place. Originally, the prior owners submitted a plan to ADEQ for the installation of POU units in each home due to the small number of customers. When it was purchased, the water company had approximately 123 customers. Within two years, the customer base grew unexpectedly to over 200 customers. This required MRWC to reevaluate the original POU plan and seek a centralized form of treatment.

MRWC is a company which is regulated by the Arizona Corporation Commission (ACC) and is unable to incur long term debt without their approval. MRWC did not receive approval to seek WIFA funding until October 21, 2009 from ACC. MRWC must now wait until December 16, 2009 to receive approval from WIFA. MRWC has no resources to move forward with the arsenic treatment system until WIFA releases funds which is not scheduled until after December 16, 2009 and will expeditiously as possible install its arsenic treatment system. Operation of the arsenic treatment system is expected to begin April 30, 2009. MRWC's progress is and has been based on government agencies and their progress. MRWC has been making every effort to comply but is powerless to affect the speed of regulatory agencies.

MRWC received a draft consent order from ADEQ regarding the arsenic exceedance and subsequently requested a meeting with Ms. Vivian Burns. In a recent meeting with Ms. Burns, MRWC stated that it agreed with the consent order with the exception of the alternative drinking water provision. MRWC also informed Ms. Burns that it plans to have its arsenic treatment system installed and operating by April 30, 2009. MRWC asked Ms. Burns how long it had to sign the consent order and Ms. Burns stated that MRWC had until December 31, 2009. In the consent order it states that within 15 days of the signing of the consent order, MRWC must provide an alternative drinking water source to its customers. On November 23, 2009, MRWC received an email from Ms. Burns stating that MRWC must

1/20/2010

provide an alternative drinking water supply for its customers by December 1st, 2009. At this time, MRWC is unaware of any other water companies within the Verde Valley that must provide an alternative drinking water supply to its customers by December 1st. The City of Cottonwood, Big Park Water Company, and Pine Valley Water Company have not received orders to provide an alternative drinking water supply to its customers by December 1st. Although the City of Cottonwood is overseen by EPA, Ms. Burns in her email states, "I can't comment on the EPA ruling(s)." Although Big Park Water Company has some arsenic treatment systems in place, it still is serving many of its customers untreated water.

MRWC contacted Ms. Corrine Li from Region 9 of the EPA to seek a waiver in providing an alternative drinking water source. Ms. Li stated that the EPA would expect that ADEQ would provide a "level playing field with all companies". Ms. Li also stated that "with arsenic levels of 30-35, they do not expect there to be long term health effects."

MRWC is unable to provide an alternative drinking water source within the requested time frame for the following reasons:

1. Providing an alternative drinking water supply to its 480 customers each day would create a financial hardship on the company.
2. MRWC currently has no facilities to handle drive up water customer distribution.
3. To provide drive up water customer distribution would require that MRWC submit an Approval to Construct to ADEQ in order to restructure its water treatment facility. An ATC from ADEQ requires approximately 6 weeks.
4. Having to provide a temporary water situation will hinder a permanent solution.

MRWC has informed and communicated with Ms. Burns on the following:

- MRWC has been working with its engineers, Environmental Hydro-Systems
- MRWC has been working with ACC and received approval on October 21, 2009
- MRWC has been working with WIFA and anticipates financial assistance in December, 2009
- MRWC has been providing the quarterly monitoring although in the consent order Ms. Burns states it has not.

MRWC does not feel that ADEQ is providing a "level playing field" in this matter. MRWC can find no evidence of aggressive action that has been taken with local water companies such as The City of Cottonwood, Big Park Water Company and Pine Valley Water Company. MRWC understands that there are companies that have not made their applications to ACC and WIFA. Furthermore, although MRWC has been doing its best, it does not feel that it should have been subjected to off the cuff, unprofessional and derogatory comments made to Ms. Olsen by Ms. Burns. Ms. Burns stated to Ms. Olsen, "You must be sleeping with the guys over at the Arizona Corporation Commission for them to be so helpful to you."

MRWC requests that it be given until May 30, 2009 to install and begin operation of its intended arsenic treatment system. It is also requesting that the demand for the providing of alternative drinking water to its customers be

removed. MRWC also requests an apology from ADEQ for the insulting comment made by ADEQ staff.

Sincerely,

Patricia D. Olsen
Montezuma Rimrock Water Company LLC.

Cc: Cynthia Campbell

*Patricia D. Olsen, President
Montezuma Rimrock Water Co. LLC
P.O. Box 10
Rimrock, AZ 86335
928-592-9211*



Janice K. Brewer
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007
(602) 771-2300 • www.azdeq.gov



Benjamin H. Grumbles
Director

November 17, 2009

Inspection ID: 150491

Montezuma – Rimrock Water Co, LLC
Attn: Patricia Olsen
P.O. Box 10
Rimrock, AZ 86335

RE:Montezuma – Rimrock Water Company, LLC, PWS 13-071, Place ID 19794

Dear water system owner/operator:

Please find enclosed a copy of a Sanitary Survey report for the above referenced facility. The inspection was performed on November 12, 2009, in accordance with Arizona Administrative Code R18-4-101, et sequi, R18-5-101, et sequi, and Arizona Revised Statutes 49-101, et sequi. The report may include a summary of inspection, checklist and inspection rights form, or other information regarding the facility.

If there are any questions please contact H. Kent Haugerud, P.E. at the referenced address, or at 928-773-2711.

Sincerely,

Robert E. "Buck" Olberding
Field Services Manager
Northern Regional Office
Arizona Department of Environmental Quality

REO:hkh

Copy: ADEQ, Attn: Vivian Burns, Water Quality Compliance, 1110 W. Washington St.,
Phoenix, AZ 85007

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Northern Regional Office
1801 W. Route 66 • Suite 117
Flagstaff, AZ 86001
(928) 779-0313

Southern Regional Office
400 West Congress Street • Suite 433
Tucson, AZ 85701
(520) 628-6733

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2. The sample tap at well number one is facing upward and should be re-installed to face downwards so that contaminants cannot rest in the tap opening.
3. The sample tap at well number three is facing upward and should be re-installed to face downwards so that contaminants cannot rest in the tap opening.
4. The target gage cable that feeds into the top of the water storage tank at well number three needs a grommet to seal the opening around the cable.

Facility Response Guidelines:

- 1) Within 30 days please bring me to the attention of ADEQ any determinations you believe are in error.
- 2) Major Deficiencies are subject to a Notice of Violation (NOV), whereas Minor Deficiencies are subject to a Notice of Opportunity to Correct (NOC). Inspection recommendations may be implemented at the discretion of the facility in order to improve system operation. NOC's may be escalated to NOV's, where it is judged to be appropriate, such as, but not limited to, situations where repeated violations have occurred or it is deemed necessary for public health.

SYSTEM DESCRIPTION

Montezuma – Rimrock water system is a community water system that consists of the following facilities:

Site #1:

- 1 well DWR #55-621604
- 2 – 5000 gallon storage tanks
- 1- 10,000 gallon storage tank
- 1- 2400 gallon pressure tank
- 1- sodium hypochlorite chlorination system
- 2 – 7.5 HP single phase boosters

Site #2:

- 2 wells DWR #55-621605 (capped)
- DWR #55-202458
- 1 – 10,000 gallon storage tank
- 1 – 2400 gallon pressure tank
- 1- sodium hypochlorite chlorination
- 1 – 7.5 HP booster
- 1 – 5 HP booster

Well number 1 (DWR #55-621604) is currently in operation. The pump was replaced approximately four years ago according to the operator. The owner believes that the pump was set at approximately 260 feet and that the original well depth is closer to 400 feet. When the pump was replaced the well driller stated that the pump could not be lowered past the previous pump level and that the well may have collapsed below that depth. The owner would like to clean out the well and lower the pump in an effort to be able to obtain more water. No records regarding the depth of pump, or the depth of well were available at the time of the inspection. No photographs have been taken of the well. The Department of Water Resources (DWR) data base states that the depth of the well is 350 feet and the 8 inch casing is 85 feet in depth.

Well number 2 (DWR #55-621605) was taken offline in 2003. An attempt was made to drill the well deeper in order to find water with a lower arsenic concentration. A highly mineralized layer was encountered and well 2 was partially backfilled and capped, but not abandoned. Well

number 3 (DWR #55-202458) was drilled in 2004 adjacent to well number 2 and is currently online.

An approval to construct (ATC) was issued for well number 4 (DWR #55-213141) on 10/28/2009. The well has been drilled, but arsenic treatment is required before an AOC can be issued.

An up to date emergency operations plan, microbiological site sampling plan, and backflow protection plan were available at the time of the inspection. An approval to construct (ATC) may be necessary for cleaning out well number 1. Please contact engineering design review at 602-771-4671 to determine if an ATC is necessary for your project.